

SENATE BILL 1209

By Woodson

AN ACT to amend Tennessee Code Annotated, Title 41,
Chapter 51, relative to restraining pregnant
prisoners.

WHEREAS routinely restraining a pregnant woman may pose undue health risks to the woman and her pregnancy; and

WHEREAS the vast majority of female prisoners or detainees in Tennessee are non-violent offenders who pose little or no threat; and

WHEREAS, the federal Bureau of Prisons, the U.S. Marshalls Office, the American Correctional Association, the American College of Obstetricians and Gynecologists, and the American Public Health Association each oppose restraining women during labor, delivery, and post-partum because it could be dangerous to women's health and well being; now, therefore
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 41, Chapter 51, is amended by designating the existing language as Part 1 and adding the following new Part 2:

§ 41-51-201

(a) "Restraints" means any physical restraint or mechanical device used to control the movement of a prisoner or detainee's body or limbs, or both including, but not limited to, flex cuffs, soft restraints, hard metal handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security (tether) chain or a convex shield.

(b) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity and duration to bring about effacement and progressive dilation of the cervix.

(c) "Post-partum" means, as determined by her physician, the period immediately following delivery, including the entire period a woman is in the hospital or infirmary after the birth of her child or children. Unless the inmate is kept in the hospital for an extended period for other reasons not associated with the birth of her child or children.

(d) "Correctional institution" means any entity under the authority of any state, county or municipal law enforcement division that has the power to detain or restrain, or both, a person under the laws of the State.

(e) "Prisoner" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program.

(f) "Detainee" includes any person detained under the immigration laws of the United States at any correctional facility.

(g) "Corrections official" means the official designated as responsible for oversight of a correctional institution, or his or her designate.

(h) "Extraordinary circumstance" means that the prisoner or detainee presents a substantial flight risk or some other extraordinary medical or security circumstance

§ 41-51-202

(a) A correctional institution shall not use restraints on a prisoner or detainee known to be pregnant, including during labor, transport to a medical facility, delivery and post-partum, unless the corrections official makes an individualized determination that the prisoner or detainee presents an extraordinary circumstance that dictates restraints be used to ensure the safety and security of the prisoner or detainee, the staff of the

correctional institution or medical facility, other prisoners or detainees, or the public, except that:

(1) If the doctor, nurse or other health professional treating the prisoner or detainee requests that restraints not be used, the corrections officer accompanying the prisoner or detainee shall immediately remove all restraints; and

(2) Under no circumstances shall leg or waist restraints be used on any prisoner or detainee who is in labor or delivery.

(b) If restraints are used on a prisoner or detainee pursuant to subsection (a):

(1) The type of restraint applied and the application of the restraint both must be done in the least restrictive manner necessary; and

(2) The corrections official shall make written findings within ten (10) days as to the extraordinary circumstance that dictated the use of the restraints to ensure the safety and security of the prisoner or detainee, the staff of the correctional institution or medical facility, other prisoners or detainees, or the public. These findings shall be kept on file by the institution for at least five (5) years and be made available for public inspection, except that no information identifying any prisoner or detainee shall be made public in violation of § 10-7-504 without the prisoner or detainee's prior written consent.

(c) This section shall not apply if the inmate is kept in the hospital for an extended period of time for other reasons not associated with the birth of her child or children.

§ 41-51-203

(a) Within 30 days of the effectiveness of this Act, all correctional institutions shall develop rules according to this Part, and provide such rules to inmates as required under § 41-21-218.

SECTION . This act shall take effect July 1, 2009, the public welfare requiring it.